

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

ROBERT L. SCHULZ and JOHN
LIGGETT,

Plaintiffs,

-against-

1:07-CV-0943 (LEK/DRH)

NEIL KELLEHER; DOUGLAS KELLNER,
individually and as a Commissioner of the
New York State Board of Elections;
EVELYN AQUILA, individually and as a
Commissioner of the New York State Board
of Elections; and HELENA MOSES
DONAHUE, individually and as a
Commissioner of the New York State Board
of Elections,

Defendants.

DECISION AND ORDER

This matter comes before the Court following a Report-Recommendation filed on October 13, 2009, by the Honorable David. R. Homer, United States Magistrate Judge, pursuant to 28 U.S.C. § 636(b) and L.R. 72.3(c) of the Northern District of New York. Report-Rec. (Dkt. No. 342).

Within ten days, excluding weekends and holidays, after a party has been served with a copy of a Magistrate Judge's Report-Recommendation, the party "may serve and file specific, written objections to the proposed findings and recommendations," FED. R. CIV. P. 72(b), in compliance with L.R. 72.1. No objections have been raised in the allotted time with respect to Judge Homer's Report-Recommendation. Furthermore, after examining the record, the Court has determined that the Report-Recommendation is not subject to attack for plain error or manifest injustice.

Accordingly, it is hereby

ORDERED, that the Report-Recommendation (Dkt. No. 342) is **APPROVED** and **ADOPTED** in its **ENTIRETY**; and it is further

ORDERED, that Plaintiffs' Motion (Docket No. 338) to substitute James A. Walsh and Gregory P. Peterson as party-defendants for Defendants Kelleher and Donahue is **GRANTED** as to the claims against Kelleher and Donahue in their official capacities; and it is further

ORDERED, that Plaintiffs' Motion (Docket No. 338) to substitute James A. Walsh and Gregory P. Peterson as party-defendants for Defendants Kelleher and Donahue is **DENIED without prejudice** as to the claims against Kelleher and Donahue in their individual capacities; and it is further

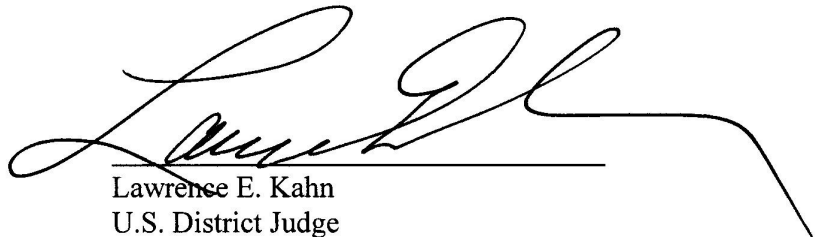
ORDERED, that Defendants' cross-Motion (Docket No. 339) is **GRANTED**, such that defendants amended answer (Dkt. No. 343) adding the affirmative defense of qualified is proper; and it is further

ORDERED, that Plaintiff's action be **terminated** against the deceased Defendant Kelleher in its entirety; and it is further

ORDERED, that the Clerk serve a copy of this Order on all parties.

IT IS SO ORDERED.

DATED: November 20, 2009
Albany, New York


Lawrence E. Kahn
U.S. District Judge